

FILED

NOT FOR PUBLICATION

JAN 17 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN CUEVAS-AVILA,

Defendant - Appellant.

No. 05-10199

D.C. No. CR-04-00372-HDM/RJJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Juan Cuevas-Avilas appeals the sentence imposed following his guilty plea to unlawful reentry of a deported alien in violation of 8 U.S.C. § 1326.

Cuevas-Avilas contends that the district court erred in enhancing his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

sentence under 8 U.S.C. § 1326(b) based on a non-jury fact finding regarding his prior conviction. As Cuevas-Avila concedes, his contention is foreclosed by this court's precedent, and he raises the issue only to preserve it should legal precedent change. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres*, even though it has been called into question, unless it is explicitly overruled by the Supreme Court); *United States v. Quintana-Quintana*, 383 F.3d 1052, 1053 (9th Cir. 2004).

AFFIRMED.